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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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APPLICATION FOR EMERGENCY
RULEMAKING REGARDING SLAMMING AND
OTHER DECEPTIVE PRACTICES.

RT-00000J-99-0034

COMMENTS OF VERIZON
WIRELESS

Verizon Wireless hereby submits comments on the consumer protection standards

proposed by the Arizona Corporation Commission ("Commission") in the above-captioned docket. These comments respond to Commission Staff's proposed slamming and cramming rules as A.A.C. R14-2-2001 through R14-2-2010, and A.A.C. R14-2-1901 through R14-2-1911. In this proceeding, the Commission seeks to implement certain 1999 statutory amendments dealing with consumer fraud. Although these amendments exempt wireless carriers, the Commission proposes to apply its slamming and cramming regulations to all telecommunications companies in Arizona, apparently including wireless carriers. Given the Arizona Legislature's express statutory exemption of wireless carriers, the Commission should make clear that its proposed slamming and cramming rules do not apply to wireless carriers. Even if the Commission had statutory authority to impose its proposed slamming and cramming regulations on wireless telecommunications companies, there is no evidence that wireless carriers in Arizona have engaged in such practices, and no showing that competitive forces in the CMRS industry are not sufficient to prevent such conduct.

BACKGROUND

In 1999, the Arizona Legislature enacted a number of amendments to the laws

1 governing telecommunications services in the state. Ariz. Rev. Stat. §§ 44-1571, 1572, 1573,
2 1574. These provisions grant the Commission authority to adopt rules to prevent: (i) any change
3 in an end-user customer's pre-subscribed telecommunications service without the appropriate
4 consent of that customer, or "slamming" and (ii) the inclusion of any unauthorized or unverified
5 charges on a customer's bill, or "cramming." Ariz. Rev. Stat. §§ 44-1572(L), 44-1573(K). The
6 Arizona Legislature applied these rules to "local telecommunications service providers" and
7 "long-distance telecommunications providers," the definitions of which **exclude** providers of
8 "wireless, cellular, personal communication or commercial radio services." Ariz. Rev. Stat. §§
9 44-1571(3), (4).

10 On May 29, 2001, the Commission released its informal request for comment on
11 the proposed consumer protection standards in this proceeding. The Commission proposes new
12 rules designed to prevent slamming and cramming. The detailed regulatory framework would
13 establish numerous obligations and restrictions, including customer-by-customer and transaction-
14 by-transaction notice, consent, verification, and record retention requirements. The
15 Commission's proposal also establishes a customer complaint process, as well as enforcement
16 procedures and various sanctions and penalties for violating carriers. The Commission indicates
17 that these proposed rules will apply to all telecommunications companies operating in Arizona.

18 **DISCUSSION**

19 **I. THE COMMISSION SHOULD CLARIFY THAT ITS PROPOSED RULES DO** 20 **NOT APPLY TO WIRELESS CARRIERS**

21 As indicated above, the Commission is implementing a number of 1999 statutory
22 amendments designed to prevent slamming and cramming. Ariz. Rev. Stat. §§ 44-1571, 1572,
23 1573, 1574. While these statutory provisions impose and call for agency adoption of various
24 restrictions on the business practices of long-distance and local telecommunications providers,

1 they explicitly state that these restrictions do not apply to providers of “wireless, cellular,
2 personal communications or commercial radio services.” Ariz. Rev. Stat. §§ 44-1571.1, 1571.2.
3 As a result, the Commission lacks statutory authority to apply slamming or cramming regulations
4 to wireless carriers.

5 In its proposed slamming and cramming rules, however, the Commission states
6 that these requirements apply “to each ‘telecommunications company’ as that term is defined in
7 A.A.C. R14-2-1102.15.” Because telecommunications companies are defined as carriers that
8 provide “telecommunications services,” which include wireless services, wireless carriers would
9 wrongfully appear to be subject to these proposed rules. In order to resolve any resulting
10 ambiguity and prevent the unnecessary diversion of legal and administrative resources to this
11 question, the Commission should now explicitly clarify that its proposed rules on slamming and
12 cramming would not apply to providers of CMRS.

13 **II. ANY COMMISSION RULES ON CRAMMING AND SLAMMING SHOULD**
14 **EXEMPT CMRS PROVIDERS.**

15 Verizon Wireless recognizes the Commission’s duty to protect Arizona
16 consumers against unreliable or unscrupulous telecommunications companies and appreciates
17 the seriousness of the Commission’s concern with certain deceptive practices that the proposed
18 rules seek to avoid. Even if the Commission had authority to apply the rules to wireless carriers,
19 there are numerous policy reasons to exempt wireless carriers from these rules.

20 As discussed further below, the proposed regulations are neither necessary nor
21 well suited to wireless carriers’ dynamic and competitive business practices. To avoid
22 hampering wireless growth and innovation in Arizona and elsewhere, any rules should exempt
23 the wireless industry from all of the rules proposed in this proceeding.
24

1 **A. There is No Evidence of Cramming and Slamming in the Wireless Industry, Where**
2 **Competitive Forces Guard Against Misleading Practices.**

3 With its proposal, the Commission has apparently painted the telecommunications
4 industry with a broad brush. There is no evidence in Arizona or elsewhere that either slamming
5 or cramming is a problem that befalls wireless consumers. Indeed, the Federal Communications
6 Commission ("FCC") offered the following commentary on wireless billing practices when it
7 exempted the wireless industry from most of its truth-in-billing requirements:

8 The record does not, however, reflect the same high volume of customer
9 complaints in the CMRS context, nor does the record indicate that CMRS billing
practices fail to provide consumers with clear and non-misleading information
they need to make informed choices.¹

10 Given the level of competition in the wireless marketplace, slamming and
11 cramming are extremely unlikely in the wireless context. Wireless providers have enormous
12 incentive to treat their customers in the most efficient and consumer-friendly manner possible.
13 Practices that give rise to disputes can encourage customers to change service providers. With
14 multiple wireless carriers doing business in Arizona, customers have a variety of service options
15 and can address their dissatisfaction with one carrier by taking their business to another
16 provider.²

17 The willingness of customers to change carriers is reflected in industry churn
18 rates. Nationally, churn in the wireless industry in recent years has averaged from 2% to 4.2%

19
20 ¹ Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking,
Federal Communications Commission, FCC Rcd, CC Docket No. 98-170, para. 16 (1999) ("*FCC Truth-in-Billing*
21 *Order*").

22 ² In fact, requiring all wireless providers in Arizona to comply with these highly prescriptive regulations
will discourage service differentiation and competition between carriers. Customer relations and billing practices
23 are an important basis for competition and consumer choice, and carriers distinguish themselves from their
competitors in the marketplace through their conduct in this area. By discouraging such competition, a requirement
that all wireless telecommunications companies adopt the same procedures with respect to such practices may
24 actually diminish consumer welfare.

1 per month, depending upon the carrier. Such monthly rates translate into a yearly turnover of
2 25% to 50% of a wireless carrier's customer base. While churn is driven by many factors,
3 wireless telecommunications companies seize every opportunity to minimize customer problems
4 and retain their customer base.

5 Existing federal law renders slamming particularly unlikely in the wireless
6 marketplace. Slamming is premised on the concept of one long distance carrier unlawfully
7 directing a customer's local phone company to substitute it for that customer's existing long
8 distance service provider. Wireless telecommunications companies, however, are not subject to
9 equal access requirements,³ a fact that leaves them free to designate any toll carrier for their
10 subscribers. Wireless carriers thus generally do not offer customers the option of selecting a toll
11 carrier as part of their package of wireless services; instead, they often bundle long distance and
12 local services. With respect to cramming, wireless providers routinely add charges for services
13 ordered by the customer that relate to the underlying wireless services, and there is simply no
14 record of complaints in Arizona or elsewhere of cramming in the wireless industry. If applied to
15 such routine transactions, the Commission's highly prescriptive rules could dramatically reduce
16 the ease with which customers can make changes to their accounts, while doing nothing to
17 prevent the deceptive acts from which the Arizona legislature intended to protect consumers.

18 **B. Application of the Proposed Rules to CMRS Providers Will**
19 **Impose Significant Costs and Provide Few Benefits.**

20 Compliance with the Commission's proposed slamming and cramming rules
21 would impose a substantial burden on wireless providers. The various rules on notice, consent,
22 record retention, and other practices would require the evaluation and likely modification of
23 many providers' operational systems and procedures. Providers such as Verizon Wireless would

24 ³ 47 U.S.C. § 332(c)(8).

1 be forced to expend significant dollars for capital investments, employee training, systems
2 enhancements, and other materials. As discussed further below, these expenditures will yield no
3 benefit for Arizona's wireless consumers. In addition, many wireless carriers already have in
4 place many procedures like those identified in the rules, and even if any specific wireless
5 telecommunications company does not have procedures that align precisely with those contained
6 in the proposed rules (i.e., notice, consent, verification), their practices must be fair and
7 reasonable in a competitive marketplace or they will lose customers to other carriers. There is
8 simply no need to impose regulatory requirements when there is no evidence that such
9 misleading or deceptive practices occur in the wireless marketplace.

10 **C. The Commission Should Look to the FCC's Treatment of the Wireless Industry as a**
11 **Guide in This Proceeding.**

12 Before imposing burdensome slamming and cramming regulations on wireless
13 telecommunications companies, the Commission should consider the FCC's approach to these
14 issues in the wireless context. In recent years, the FCC has carried out two lengthy proceedings
15 in which it has studied the issues of slamming and cramming in the telecommunications industry
16 as a whole and accumulated an extensive public record on these harmful practices. In both
17 proceedings, the FCC has recognized that the business and operational practices of wireless
18 providers differ from those of local exchange and long distance providers, and it has taken these
19 distinctions into account in its formulation of new regulation.

20 In the slamming context, the FCC has rightfully concluded that the record of few
21 complaints against wireless providers supported its decision to exclude the wireless industry
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23
24

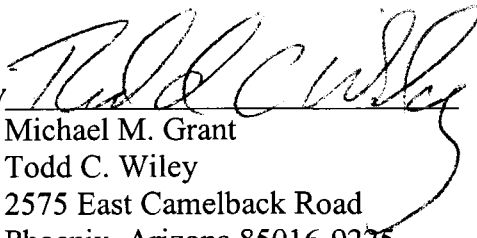
1 from its slamming rules.⁴ With respect to cramming, the FCC in its Truth-in-Billing docket
2 again noted the absence of a record of complaints against wireless providers, and has not
3 extended cramming regulations to wireless carriers. Instead, the FCC has chosen to apply only
4 two very broad principles relating to information provided on customers' bills to CMRS
5 providers. In doing so, it has struck the appropriate balance between continued consumer
6 protection and the avoidance of unnecessary and burdensome regulation of the wireless industry.
7 Since Arizona wireless providers must already comply with these federal requirements, there is
8 no basis for imposing additional requirements at the state level.

9 **CONCLUSION**

10 Verizon Wireless urges the Commission to make clear that wireless
11 telecommunications companies are exempt from its proposed slamming and cramming rules
12 based on the intent of the Arizona legislature. Such rules are also unnecessary because market
13 forces in the wireless industry are sufficient to prevent such conduct.

14 DATED this 7 day of June, 2001.

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23 ⁴ In carving out the wireless exemption, the Commission stated that "[c]ommercial mobile radio services
24 (CMRS) providers shall be excluded from the verification requirements of this Subpart as long as they are not
required to provide equal access to common carriers for the provision of telephone toll services, in accordance with
47 U.S.C. § 332(c)(8)." As noted above, wireless carriers are not required to provide equal access.

1 **Original** and ten copies filed this
2 7th day of June, 2001 with:

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